

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6298 of 1998

to

FIRST APPEAL No 6300 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

POPATLAL SOMABHAI

Versus

DY.COLLECTOR

Appearance:

MR AJ PATEL for Petitioner
MR ND GOHIL, AGP for Respondent No. 1
MR KM PARIKH for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT
and

Date of decision: 16/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals under section 54 of the Land Acquisition Act read with section 96, CPC, at the instance of the original claimants, whose reference applications were decided by the Reference Court under section 18 of the said Act. For the reasons stated hereinafter we do not consider it necessary to go into the factual details in respect of the quantum of compensation awarded and the evidence on which such compensation in terms of market value has been determined.

2. Mr. A.J. Patel, learned counsel for the appellant states that he does not press the appeal on merits of the valuation determined by the Reference Court. We, therefore, do not enter into a discussion of the evidence on this aspect of the matter.

3. However, there is one controversy which requires to be considered as pressed by the learned counsel for the appellant. It is contended that the area of the lands to be acquired as notified under section 4 Notification under the Act is in fact smaller than the true and correct area of the lands in fact acquired. This discrepancy apparently arises from different records showing the different area of the lands in question. The survey numbers whose area is in dispute are survey numbers 465/1, 480/1 and 480/3. We reiterate that no other survey number which has been acquired gives rise to any dispute as to the true and correct area. This discrepancy apparently arises from the fact that the area of these survey numbers as shown in the revenue records (Form 7/12) is larger than the area of the very same survey numbers as notified in the section 4 notification. There is ample evidence on record to show that the dispute as to the area was raised by the claimants during the course of the land acquisition proceedings. Exh.21 which is a statement filed by the land holders under section 9 (claim statement) also emphasises this discrepancy in area, and this area has been identified by the claimants as covering 7503 square meters. There is also a letter of the claimants at page 1 of the paper book which emphasises this discrepancy. This contention was also taken in the Reference Court during the course of hearing of the Reference under section 18 of the said

Act, which however has not been satisfactorily dealt with by the Reference Court.

4. The question therefore is whether the compensation awarded by the Reference Court under section 18 of the said Act on the basis of the area notified in the notification under section 4 is the true and correct compensation, or would the claimants be entitled to something more, on the basis that actually and physically the lands of which possession has been taken by the acquiring body on the basis of survey numbers alone is of a larger area. This is obviously a controversy which cannot be decided merely by reference to the record and can only be determined by an actual and physical survey of the lands of which actual possession has been taken by the acquiring body.

5. As a result of the hearing and discussion in this context, a consensus has been arrived at between the learned counsel for the parties, as duly instructed by their respective clients, on the basis of which the following directions are given:

[A] The actual and physical area of the three survey numbers referred to hereinabove shall be surveyed by the District Inspector of Land Records (Ahmedabad), in the presence of representatives of the respective parties. This area will then be compared with the survey of the actual area of which the acquiring body has taken possession.

[B] It is directed on the basis of the aforesaid consensus that the original claimants-land holders in respect of these three survey numbers would be entitled to the compensation for the area of the lands actually taken possession of, on the basis of the true area determined by the said survey, at the market value determined by the Reference Court in this group of cases, (or as may be determined by the High Court in case there are any appeals filed and pending by the State or the acquiring body arising from the same References). It is so held and directed. It is understood that by compensation we mean also other statutory allowances in respect of the market value of the lands as contemplated by the Land Acquisition Act.

[C] The said survey as directed above shall be carried out as expeditiously as possible and preferably before 28th February 2001.

6. In the light of the above observations and directions no further orders are necessary in the present group of appeals. Subject to the aforesaid observations

These appeals are accordingly disposed of with no order as to costs. Decree accordingly. Direct service permitted.

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